

10-31-2011

5.343:02 Phased Retirement Agreement Faculty (for CA campuses only)

Follow this and additional works at: http://aura.antioch.edu/policy_forms

Recommended Citation

"5.343:02 Phased Retirement Agreement Faculty (for CA campuses only)" (2011). *999.x Policy Forms*. Paper 19.
http://aura.antioch.edu/policy_forms/19

This Article is brought to you for free and open access by the Antioch University Policies at AURA - Antioch University Repository and Archive. It has been accepted for inclusion in 999.x Policy Forms by an authorized administrator of AURA - Antioch University Repository and Archive. For more information, please contact dpenrose@antioch.edu, wmcgrath@antioch.edu.



PHASED RETIREMENT AGREEMENT

This AGREEMENT made this ___ day of __, 20__, between Antioch University _____, (hereinafter referred to as “EMPLOYER” or “ANTIOCH”) and _____, (hereinafter referred to as “EMPLOYEE”). This Agreement is made in accordance with the Phased Retirement Policy adopted by the Antioch University Board of Governors, (hereinafter referred to as “BOARD”) in its Resolution 6.6.09:13. This Agreement is not effective unless approved by the campus President as evidenced by his or her signature.

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. In consideration for the promises and inducements contained herein, EMPLOYEE voluntarily releases, waives and relinquishes his/her core faculty regular full-time status with the EMPLOYER. The EMPLOYEE further agrees that the academic appointment hereunder will be at half-time service for the period of this Agreement. During the term of this Agreement, employee shall perform those services set forth in the job description annexed hereto as **Exhibit A**. EMPLOYEE agrees that the term of this Agreement is _ academic years beginning the first day of July, 20__ and ending the last day of June, 20__.
2. During the term of this Agreement, EMPLOYEE shall receive a salary equal to fifty percent (50%) of the full-time salary which he/she received at the time this Agreement is signed. In addition, compensation paid during the year will be paid in equal installments over 12 months irrespective of the pattern of duties under the EMPLOYEE’S approved half-time work plan. EMPLOYEE will receive prorated salary increases during the term of this Agreement commensurate with those annual increases provided to full-time faculty.
3. EMPLOYEE understands that eligibility for this Agreement is based upon EMPLOYEE being at least 59.5 years of age and having 10 years of continuous, uninterrupted full-time employment with the EMPLOYER. EMPLOYEE hereby represents that he/she satisfies these eligibility requirements.
4. EMPLOYEE shall receive the same EMPLOYER provided benefits including TIAA-CREF contributions which he/she would be entitled to receive as full-time core faculty. EMPLOYEE acknowledges that EMPLOYER contributions during the term of this Agreement shall be prorated based upon the half-time salary received while participating in this program. EMPLOYEE further acknowledges that the EMPLOYER reserves the right to modify, within its sole discretion, those benefits to which core faculty are entitled and the EMPLOYER’S contributions

toward those benefits. However, in no event shall the EMPLOYER'S contribution to such benefits under this Agreement be less than half that contributed to the benefits of a full-time core faculty member.

5. As a material inducement to enter into this Agreement and for good and valuable consideration described herein, EMPLOYEE, for himself/herself and for his/her agents, heirs, executors, administrators, personal representatives, any future estates and assigns hereby irrevocably and unconditionally releases and forever discharges ANTIOCH, ANTIOCH'S assigns, agents, trustees, officers, employees, representatives, attorneys, insurers and its divisions, affiliates, successors and predecessors, and the past, present and future agents, officers, employees, representatives, attorneys, insurers and agents or person acting by, through under or in concert with ANTIOCH, from any and all claims, liabilities, damages, causes of action, suits, charges, losses, debts and expenses of any kind or nature whatsoever that EMPLOYEE has or may have as of the date he/she executes this AGREEMENT.

- a. The Claims released in paragraph 5 above shall specifically include, but not be limited to: 1) claims arising under the Age Discrimination in Employment Act, as amended, 29 U.S.C. § 621 et seq. (ADEA), or under any other federal, state, local or common law, statutes, ordinances, directives, regulations, or orders prohibiting or addressing discrimination on account of age including the present effects of past acts; (2) claims arising under the Americans with Disabilities Act or under comparable laws, state or local laws, or ordinances; (3) claims arising under the Older Workers Benefit Protection Act (OWBPA); (4) claims arising under the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq. (sometimes referred to as "ERISA"), including, without limitation, any claim based on § 510 of ERISA or any claims based upon any employment benefit or welfare plan maintained on behalf of any or all of ANTIOCH's employees; (5) all claims for retaliation or reprisal of any nature whatsoever, including any reprisal claim under ADEA or ERISA; (6) employment discrimination; (7) violation of California Fair Employment and Housing Act, Government Code § 12940 et seq.; (8) violation of California Fair Employment and Housing Act, Government Code § 12945 et seq.; (9) tortious wrongful termination of employment; (10) violation of public policy; (11) breach of contract; (12) breach of the covenant of good faith and fair dealing; (13) negligent hiring, training and retention; (14) intentional infliction of emotional distress; (15) negligent infliction of emotional distress; (16) libel or slander; (17) defamation; (18) tortious interference with contract; (19) public policy tort; (20) abusive discharge; (21) wrongful discharge; (22) civil conspiracy; (23) invasion of privacy; (24) personal injury of any nature; (25) claims arising under any federal, state, local or common law, including the Fair Labor Standards Act, statute, ordinance, regulation, directive, or other regulating or addressing wage and hours of employment

or other terms and conditions of employment; (26) claims for attorney's fees, expenses, costs or sanctions under the Age Discrimination in Employment Act, as amended, 29 U.S.C. § 621 et seq.; and (27) personal injury of any nature. EMPLOYEE further releases and forever discharges ANTIOCH from all other claims whether suspected or unsuspected, whether known or unknown, whether specifically mentioned herein or which may not exist at the time of the signing of this AGREEMENT or might be claimed to have existed as of the time of the signing of this AGREEMENT, including, but not limited to rights under federal, state, local or common law statutes, ordinances, regulations, directives, orders, including the claims arising from any events which took place during the time in which EMPLOYEE was employed by ANTIOCH and/or arising out of the employment relationship between ANTIOCH and EMPLOYEE on or prior to the date this AGREEMENT is signed.

b. EMPLOYEE EXPRESSLY ACKNOWLEDGES that to the full extent permitted by law, the release of all claims contained in this AGREEMENT is with prejudice to any claims he/she may have, whether known or unknown, as of the effective date of this AGREEMENT and is a full and final release once the revocation period has expired.

c. EMPLOYEE acknowledges he/she may hereafter discover claims or facts in addition to, or different from, those which he/she knows or believes, to exist, with respect to the subject matter of this AGREEMENT, which, if known or suspected at the time of the execution of this AGREEMENT, may have materially affected this AGREEMENT. Nevertheless, EMPLOYEE hereby waives any and all rights or benefits, which he/she may now have, except those specifically excluded herein, under the terms of section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his/her favor at the time of executing the release, which if known by him/her must have materially affected his/her settlement with the debtor.

d. EMPLOYEE further waives and relinquishes all other statutes, rights, remedies, and benefits of all other jurisdictions, which are of the same or similar effect as section 1542 of the California Civil Code. Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release, EMPLOYEE expressly acknowledges that this AGREEMENT is intended to include in its effect, without limitation, except as set forth herein, all claims, which he/she does not know or suspect to exist.

6. Pursuant to the ADEA, EMPLOYEE hereby acknowledges as follows:

- a. This waiver is given in exchange for EMPLOYER agreeing to the phased retirement and the extension of core faculty benefits to EMPLOYEE regardless of his/her part-time status which benefits are beyond those which the EMPLOYEE would otherwise be entitled.
 - b. EMPLOYEE has been advised to consult with an attorney if he/she so wishes before signing this Agreement.
7. EMPLOYEE hereby acknowledges that the terms of this Agreement and the Phased Retirement Program Policy have been fully explained to EMPLOYEE and that EMPLOYEE'S consent to this Agreement is completely voluntary.
8. EMPLOYEE is responsible for seeking his/her own tax advice and acknowledges that EMPLOYER shall not be held responsible for any information provided to EMPLOYEE regarding the tax consequences of this Agreement.
9. EMPLOYEE represents that he/she did not rely, nor has he/she relied, upon any statement, promise or inducement concerning the terms or effects of this Agreement other than those contained in this Agreement. EMPLOYEE agrees that he/she freely chose to enter into this Agreement after carefully considering the terms and conditions of this Agreement. EMPLOYEE acknowledges that he/she has carefully read and fully understands all of the provisions included in this Agreement.
10. If any term, part or provision of this Agreement is held by a court to be invalid, illegal, unenforceable or in conflict with any law, the validity of the remaining portions or provisions shall not be affected, and the rights, obligations and covenants of the undersigned parties shall be construed and enforced as if the Agreement did not contain the particular term, condition, part or provision held to be unlawful.
11. EMPLOYEE and EMPLOYER have fully complied with the release and waiver provisions of the Older Workers' Benefit Protection Act. EMPLOYEE acknowledges that the waiver herein of any claims arising under the ADEA is reasonably calculated to be understood by an individual in EMPLOYEE'S circumstances and it is so understood by EMPLOYEE. EMPLOYEE acknowledges that he/she has been given a reasonable period of time to consider this Agreement.
12. EMPLOYEE understands that he/she has been given a period of forty-five (45) days to review and consider this Agreement before signing it. EMPLOYEE further understands that he/she may use as much of this 45-day period as he/she wishes prior to signing.
13. EMPLOYEE may revoke this Agreement within seven days of his/her signing it.

Revocation can be made by delivering a written notice of revocation to Tom Faecke, Vice Chancellor and CFO, Antioch University, 150 E. South College Street, Yellow Springs, Ohio 45387. For this revocation to be effective, written notice must be received no later than the close of business on the seventh day after EMPLOYEE signs this Agreement. If EMPLOYEE revokes this Agreement, it shall not be effective or enforceable and EMPLOYEE will not receive the benefits described above.

14. For purpose of enforcement of this Agreement, a facsimile signature shall be deemed as enforceable as the original and may be executed in counterparts.
15. This Agreement constitutes the entire agreement of the parties and shall not be modified unless approved by the University Chancellor after a petition made on behalf of the EMPLOYEE by the University President. The parties hereto agree that they will make no claim at any time that this Agreement has been orally altered or modified or otherwise changed by oral communications of any kind or character.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day indicated below:

THIS DOCUMENT CONSTITUTES A LEGALY BINDING CONTRACT. EMPLOYEE IS ADVISED TO CONSULT WITH LEGAL COUNSEL PRIOR TO SIGNING. EMPLOYEE UNDERSTANDS THAT BY EXECUTING THIS AGREEMENT HE/SHE IS WAIVING AND RELEASING CERTAIN RIGHTS.

ANTIOCH UNIVERSITY

By: _____
President, Antioch University _____ Employee

Date: _____ Date: _____